not take steps during the relevant period to evict the tenant, but in my opinion it is unnecessary to consider these reasons. In my opinion the failure of the defendants in not taking steps between 31st May, 1957 and 24th February. 1961 to evict the tenant from the said lands did not cause any loss to the estate because it was open to the defendants to claim *mesne profits* within six years of the expiry of the lease and they may well have done so had they not been removed from acting as trustees before the said period of six years expired. The estate has certainly suffered a loss, but the loss has been caused, in my opinion by the failure of the plaintiffs to claim *mesne profits* in Suit No. 934 of 1961. In my judgment the loss to the estate has not been caused by the defendants and therefore they are not liable to make good such loss.

For the above reasons I hold that the plaintiffs are not entitled to the declaration which they seek and their claim is therefore dismissed with costs.

Claim dismissed.

Solicitors: *Mallal & Namazie; Rodyk & Davidson.*

IN RE LEN CHEE OMNIBUS CO. LTD. CHIN SOW LAN v. LEE CHEE OMNIBUS CO. LTD. & ORS.

[O.C.J. (Raja Azlan Shah J.) June 6, 1969]

[Kuala Lumpur — Originating Summons No. 42 of 1968]

Companies — Application for rectification of register — Discretion of court — Delay in bringing application — Laches — Companies Act, 1965, s. 162.

In this case the applicant applied for an order under section 162 of the Companies Act, 1965 that the register of members be rectified. The applicant claimed to be the registered owner of the disputed shares in the respondent company. In September 1957 she went to see a director of the company and informed him that she intended to give a power of attorney to her mother in relation to her shares. Subsequently the mother obtained a share transfer form and gave that to the director for the applicant to sign. The director then requested the applicant to sign the transfer form saying that it was to effect a power of attorney. It was only after the death of her mother in 1963 that the applicant discovered that her shares had been transferred to and registered in her mother's name. It was not till December 1968 that this application was made.

Held: (1) the court has a discretion to give a summary remedy under section 162 of the Companies Act, 1965, but would not normally entertain such an application if the facts are as in this case, complex and disputed;

(2) in this case the application was not made within a reasonable time after the applicant became aware of the facts entitling her to relief and the application must therefore be dismissed for laches.

Cases referred to:—

(1) *Re Stranton Iron and Steel Co.* (1873), L.R. 16 Eq. 559.

(2) *Re Russian Iron Works Co,* (1866), 1 Ch. App. 574.

(3) *Re Ruby Consolidated Mining Co.* (1924), 40 T.L.R. 488.

(4) *Re Greater British Proaucts Development Corporation* (1874), 9 Ch. App. 664.

(5) *Smith* v. *Clay* (1767), 3 Bro. C.C. 639n at 640n.

ORIGINATING SUMMONS.

Kirpal Singh Brar for the applicant.

A.A. Thomas for the 1st respondent.

K.L. Devasar for the 2nd, 3rd and 4th respondents.

Cud. Adv. Vult.

Raja Azlan Shah J.: This is an application by way of summons made under section 162 of the Companies Act, 1965 for an order that the register of members be rectified by deleting the name of Low Hon as holder of 20 shares in the respondent company and inserting therein the name of the appellant. The said company is the first respondent, the last three respondents are administrators of the estate of Low Hon, who was the applicant's mother.

The applicant in her affidavit stated that in 1953 she was the registered owner of the disputed shares in the respondent company. Some time in September 1957 she went to one Wong Ah Chiew who was a director of the respondent company and informed him that as she was leaving the country to settle down in Singapore, she intended to give her mother, Low Hon, a limited power of attorney, that is, to collect the monthly allowances and the dividends arising from her shares. The applicant's mother later obtained a share transfer form and gave that to Wong Ah Chiew for the applicant to sign. Wong Ah Chiew then requested the applicant to sign the transfer form saying that it was to effect a power of attorney to enable her mother to collect the monthly allowance and dividends. The applicant signed the transfer form thinking that it was merely to give a power of attorney to her mother. The mother was not present. It was only after the death of her mother in August 1963 that she discovered that her shares had been transferred to and registered in the mother's name.

Wong Ah Chiew in his affidavit deposed that the applicant saw him and informed him that she intended to leave Ampang to settle down in Singapore and that she intended to make provision for her mother. She intended to give her a power of attorney to enable her to collect the monthly allowances and the dividends from the shares. Later, the applicant's

mother came to him with a transfer form and requested him to get it signed by the applicant. Accordingly, he proceeded with the transfer form to the applicant and informed her that it was to effect a power of attorney. The applicant then signed the form. Subsequently, a circular resolution was issued to the directors of the registered company for approval. The resolution was signed by the other directors upon Wong Ah Chiew informing them that it was only for the purpose of approving a power of attorney in respect of the applicant's shares made in favour of her mother. Liew Pah Ngen, the managing director and Tai Hin, a director of the respondent company gave similar accounts in their respective affidavits. But neither of them had seen the transfer form. Liew Fah Ngen deposed that the shares transfer was not attached to the circular resolution. Tai Hin further deposed that he did not know whether the shares were transferred to the mother's name or only to her as an attorney.

The last three respondents disputed the power of attorney. They claimed that it was an outright transfer to the mother.

Mr. Devasar on behalf of the last three respondents submitted that the dispute could not be dealt with under section 162 of the Companies Act in that in so far as the applicant alleged that she had been cheated or defrauded or misled which called for further investigation, the only way open to her was to bring a regular suit.

Section 162 of the Companies Act, 1965 provides as follows:—

> *"Sub-section (1).* If — (a) the name of any person is without sufficient cause entered in or omitted from the register . . . . the person aggrieved may apply to the court for rectification of the register, and the court may refuse the application or may order rectification of the register and payment by the company of any damages sustained by any party to the application."

That section provides for a summary remedy. Its exercise is a matter of discretion which should not be unduly fettered. The decided cases, merely furnish valuable illustrations of the exercise of the discretion. Whether a case falls to be adjudged under section 162 or by a regular action must in the end depend upon the particular facts. However, one thing is clear. Where the facts are admitted and the question is simply one of law as in the case of *Re Stranton Iron and Steel Co.*,[1] where the applicants, the owner of shares, transferred them to nominees and the question of law was whether the respondent company was justified in refusing registration or where the facts can easily be ascertained such as where an applicant who has applied for shares in a company on the faith of the prospectus stating its objects sought to remove his name from the register on discovering that the prospectus was at variance with the memorandum of association, (see *Re Russian Iron Works Co. Stewart's Case*)[2] the court will entertain the application under the summary procedure, but where the facts are complex and in dispute (see *Re Ruby Consolidated Mining Co., Askew's Case*)[3] such as where an applicant was induced to take shares by fraud and that facts alleged by him are denied by the company, or where it is clear that some question in dispute calls for investigation as in *Re Greater Britain Products Development Corporation*,[4] the court will refuse to entertain the application and will leave the applicant to seek rectification in a regular action.

In the present case there are in my view further facts to be ascertained such as: why did the mother go to see Wong Ah Chiew with a transfer form? Why did Wong Ah Chiew who was a director of the respondent company ask the applicant to sign the transfer form but intending it to be a power of attorney? Other matters requiring consideration are the examination of the transfer form in question and the circumstances in which the circular resolution was passed. I feel more facts leading to the ascertainment of the truth can be elicited in a witness action than it would be upon evidence on affidavits, for it involves very serious charges of fraud against a director of the respondent company.

There is another point which is against the applicant. The court, having concurrent equitable jurisdiction, is not bound to follow what a court of law would do in such a case in adjudicating under section 162 of the Companies Act but will take cognisance of well-known equitable principles. In the words of Lord Camden L.C. in *Smith* v. *Clay* [5] a court of equity "has always refused its aid to stale demands, where a party has slept upon his right and acquiesced for a great length of time. Nothing can call forth this court into activity, but conscience, good faith, and reasonable diligence; where these are wanting, the court is passive, and does nothing."

The applicant said that she became aware that her shares had been registered in her mother's name subsequent to her mother's death. That was in 1963. Letters of administration of her estate were granted to the last three respondents in July 1966. The present summons were taken out in December 1968. That was not done within a reasonable time after she became aware of the facts entitling her to relief. I am of the opinion that she is guilty of laches.

I would therefore dismiss the application with costs with liberty to file a regular action within one month of this order.

Application dismissed.

Solicitors: *Kirpal Singh Brar; Ranjit, Thomas & Kula; Devaser & Co.*

FREDDY TAN v. PUBLIC PROSECUTOR

[F.C. (Wee Chong Jin C.J., Tan Ah Tah F.J. and Chua J.) June 13, 1969]

[Singapore — Federal Court Criminal Appeal No. Y9 of 1968]

Criminal Law and Procedure — Trial — Sentence — Appellant found guilty of culpable homicide not amounting to murder — Jury not asked whether verdict based on diminished responsibility or some other ground raised by defence — Diminished responsibility raised in defence — Penal Code, s. 304.

Penal Code, s. 304 — Culpable homicide not amounting to murder — Defence of diminished responsibility and other defences — Rule of practice.

The appellant was convicted of culpable homicide not amounting to murder and was sentenced to life imprisonment. The evidence at the trial and the summing up of the judge clearly indicated that the main and ndeed the only defence helied on in the closing stages of the trial was diminished responsibility. The jury by a majority found the appellant guilty of culpable homicide not amounting to murder but they were not asked whether their verdict (in reducing the crime of murder to culpable homicide not amounting to murder) was on the ground of diminished responsibility or some other ground raised by the defence. On appeal it was submitted that the judge should have applied the second limb of section 304 of the Penal Code which imposed a maximum punishment of 10 years imprisonment or fine or both.

Held, dismissing the appeal: on the evidence in this case there was no doubt that the jury reduced the crime of murder to one of culpable homicide not amounting to murder on the ground of diminished responsibility and the appeal against sentence must therefore be dismissed.

Practice Note: in cases where on a charge of murder a defence of diminished responsibility and some other defence such as grave and sudden provocation are raised, if the jury return a verdict of culpable homicide not amounting to murder the judge, to enable him to assess the sentence he ought to impose, may and should generally then ask whether their verdict is based on diminished responsibility or on other ground or both.

FEDERAL COURT.

S.K. Lee for the appellant.

Francis T. Seow, Solicitor-General (*K.S. Rajah,* Deputy Public Prosecutor, with him) for the respondent.

Chua J.: This is an appeal against sentence by the appellant who was convicted by the High Court of culpable homicide not amounting to murder and sentenced to life imprisonment. The court at the close of the argument dismissed the appeal. We now proceed to give our reasons for dismissing the appeal.

On the 1st October, 1967, the dead body of Gene Koh Chai Lee was found lying at the edge of the nature reserve at the 7½ m.s. Old Thomson Road. The body was decomposed. The only injuries found were injuries to the head. There were fractures on the left side of the skull and at the back of the vault of the skull and the lower part of the skull cap was missing. Police investigations led to the arrest of the appellant and he was charged with the murder of Gene Koh Chai Lee. The case of the prosecution was that it was the appellant who inflicted the injuries on the head of the deceased and killed him on the 28th September, 1967, and later threw the dead body where it was found on the 1st October, 1967.

At the trial the appellant's counsel in his opening address to the jury said that the defence would rely on grave and sudden provocation, right of private defence, sudden fight and diminished responsibility and would submit that the appellant was guilty not of murder but of culpable homicide not amounting to murder. The appellant made a statement from the dock alleging that he was insulted and provoked by the deceased and he slapped the deceased who took up a chair to hit him and he took a stick to protect himself. A fight ensued. The deceased hit him with a chair and he hit the deceased with the stick on the head. Later he found that the deceased was dead.

The defence called medical evidence relating to the appellant's mental health. The evidence was to the effect that the appellant's mind was severely abnormal and that his mental responsibility could be said to be seriously impaired. Medical evidence was given by the prosecution in rebuttal.

The evidence at the trial and the summing-up of the judge clearly indicated that the main and indeed the only defence relied on at the closing stages of the trial was that of diminished responsibility.

By a majority verdict of 5 to 2 the jury found the appellant guilty of culpable homicide not amounting to murder.

It was argued that the trial judge in this case had imposed the sentence of imprisonment for life on the basis that the jury had found the appellant guilty of the lesser offence on the ground of diminished responsibility when in fact they had not been asked if they reduced the crime of murder to culpable homicide not amounting to murder on the ground of diminished responsibility or some other ground